

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201706356	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/02/2017 2:48 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 2/2/2019	EO SOL 2/2/2019	
Date/Time CV Reported Fri, 08/04/2017 2:27 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/04/2017 2:27 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Justin Gelband	14227	952771	044 PCT
2. An officer			044 PCT
3. SGT Jennyliz Sanchez	03778	949612	044 PCT
4. POF Alexandra Michaels	13169	953107	044 PCT
5. POM David Saravia	06743	959424	044 PCT
6. POM Robert Vassallo	07162	954397	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Roberto Feliciano	19830	958578	044 PCT
2. POM Joseph Minetti	19875	958937	044 PCT
3. POM Anthony Gomez	22870	954875	044 PCT
4. POM Yolvin Rodriguez	5592	954971	044 PCT
5. POM Benny Aviles	31992	905733	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Gelband	Abuse: Police Officer Justin Gelband drew his gun.	
B.POM Robert Vassallo	Abuse: Police Officer Robert Vassallo drew his gun.	
C.POF Alexandra Michaels	Abuse: Police Officer Alexandra Michaels drew her gun.	
D.POM David Saravia	Abuse: Police Officer David Saravia drew his gun.	
E. An officer	Force: An officer used physical force against § 87(2)(b)	
F.POM Justin Gelband	Abuse: Police Officer Justin Gelband entered and searched § 87(2)(b) in the Bronx.	
G.POM Robert Vassallo	Abuse: Police Officer Robert Vassallo entered and searched § 87(2)(b) in the Bronx.	

Officer(s)	Allegation	Investigator Recommendation
H.POF Alexandra Michaels	Abuse: Police Officer Alexandra Michaels entered and searched § 87(2)(b) in the Bronx.	
I.POM David Saravia	Abuse: Police Officer David Saravia entered and searched § 87(2)(b) in the Bronx.	
J.POM Justin Gelband	Force: Police Officer Justin Gelband pointed his gun at § 87(2)(b) and § 87(2)(b)	
K.POM Robert Vassallo	Force: Police Officer Robert Vassallo pointed his gun at § 87(2)(b) and § 87(2)(b)	
L.POF Alexandra Michaels	Force: Police Officer Alexandra Michaels pointed her gun at § 87(2)(b) and § 87(2)(b)	
M.POM David Saravia	Force: Police Officer David Saravia pointed his gun at § 87(2)(b) and § 87(2)(b)	
N.SGT Jennyliz Sanchez	Discourtesy: Sergeant Jennyliz Sanchez spoke discourteously to § 87(2)(b)	
O. An officer	Abuse: An officer frisked § 87(2)(b)	
P. An officer	Abuse: An officer searched § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on August 4, 2017.

On August 2, 2017, at approximately 2:48 PM, § 87(2)(b) a security guard at § 87(2)(b) in the Bronx, called 911 to report that a man had threatened his wife with a knife. § 87(2)(b) the man in question, also called 911 and reported that § 87(2)(b) his wife, had threatened him with a knife.

Initially, PO Justin Gelband, PO Robert Vassallo, PO Alexandra Michaels, and PO David Saravia of the 44th Precinct responded. They met § 87(2)(b) in the lobby and § 87(2)(b) escorted them upstairs. As they ascended, the four officers allegedly drew their guns (**Allegations A, B, C, and D**). When § 87(2)(b) opened the apartment door, an officer allegedly pushed her aside (**Allegation E**). PO Gelband, PO Vassallo, PO Michaels, and PO Saravia then entered and searched the apartment, allegedly without § 87(2)(b) permission and against her wishes (**Allegations F, G, H, and I**). As they entered, each of the four officers allegedly pointed their guns at § 87(2)(b) and § 87(2)(b) and § 87(2)(b) s § 87(2)(b) and § 87(2)(b) children (**Allegations J, K, L, and M**).

Sgt. Jennyliz Sanchez and PO Benny Aviles of the 44th Precinct then arrived on scene and joined the officers on the § 87(2)(b) Sgt. Sanchez allegedly referred to § 87(2)(b) as a “dirty bitch” and a “drunk bitch” (**Allegation N**). Sgt. Sanchez also allegedly said to § 87(2)(b) “You’re fucking lucky” (also **Allegation N**).

Meanwhile, § 87(2)(b) encountered PO Joseph Minetti, PO Roberto Feliciano, PO Anthony Gomez, and PO Yolvin Rodriguez of the 44th Precinct in the building’s lobby. An officer allegedly frisked and searched § 87(2)(b) (**Allegations O and P**) but recovered no weapon or contraband.

Neither § 87(2)(b) nor § 87(2)(b) was arrested or issued a summons. ACS was notified of the incident and of the conditions observed within the apartment.

There is no video of this incident.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was deemed unsuitable for mediation because § 87(2)(b) and § 87(2)(b) indicated that they had contacted a civil attorney and planned to file a lawsuit in regards to this incident.
- On November 20, 2017, the Office of the Comptroller notified the undersigned investigator that no notice of claim has been filed in regards to this incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 01). It is also the first complaint involving § 87(2)(b) (Board Review 02).
- Sgt. Sanchez, who has been a member of the NYPD for seven years, has been a subject in two previous cases, § 87(2)(g) (Board Review 03).
- PO Gelband, who has been a member of the NYPD for five years, has been a subject in two previous CCRB cases (Board Review 04). In Case #201412082, it was alleged that PO Gelband drew his gun. That allegation was unfounded. § 87(2)(g)
- PO Michaels, who has been a member of the NYPD for five years, has been a subject in four previous cases (Board Review 05). In Case #201610467, it was alleged that she pointed her gun at an individual. That case was truncated. § 87(2)(g)
- PO Saravia, who has been a member of the NYPD for two years, has no prior CCRB history (Board Review 06).
- PO Vassallo, who has been a member of the NYPD for four years, has been a subject in two previous CCRB cases (Board Review 07). In Case #201309198 it was alleged that PO Vassallo pushed an individual into a wall. That allegation was exonerated. § 87(2)(g)

Potential Issues

- On September 15, 2017, § 87(2)(b) at § 87(2)(b) and a witness to a portion of the incident, informed the undersigned investigator that she did not wish to provide a statement to the investigation.

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority:** § 87(2)(b) (Board Review 08) stated that after the incident, she discovered that a sofa leg was broken. However, she was uncertain whether or not it was broken prior to the incident. § 87(2)(g)
- **Abuse of Authority:** According to § 87(2)(b) Sgt. Sanchez informed her that she was going to call ACS. It is undisputed that Sgt. Sanchez instructed PO Michaels to make a notification to ACS. Further, it is undisputed that ACS generated a case in regards. § 87(2)(g)
- **Discourtesy:** According to § 87(2)(b) (Board Review 09), Sgt. Sanchez made remarks criticizing his cleanliness and the condition of the apartment. § 87(2)(g)

Allegation A—Abuse of Authority: Police Officer Justin Gelband drew his gun.

Allegation B—Abuse of Authority: Police Officer Robert Vassallo drew his gun.

Allegation C—Abuse of Authority: Police Officer Alexandra Michaels drew her gun.

Allegation D—Abuse of Authority: Police Officer David Saravia drew his gun.

§ 87(2)(b) denied that § 87(2)(b) ever threatened her with a knife and that she ever alleged that he had done so. Further, she stated that when she made contact with the officers, they informed her that someone had reported a threat with a knife. She told them that this was false. However, when the officers reached her floor, they pressed themselves to the wall and each drew their firearms.

§ 87(2)(b) (Board Review 10), the security guard who called 911, stated that when § 87(2)(b) entered the lobby from the stairway, she was shaking and crying. § 87(2)(b) approached § 87(2)(b) and stated that her children were in danger in her apartment. She asked § 87(2)(b) to call 911 for her. § 87(2)(b) did not recall if § 87(2)(b) made mention of a knife.

Audio of § 87(2)(b)'s 911 call (Board Review 11 for audio; Board Review 12 for transcript) reveals § 87(2)(b)'s report that a woman needed assistance because her husband was threatening to cut her and because her children were still inside of her apartment. NYPD radio communications pertaining to this incident (Board Review 13 for audio; Board Review 12 for transcript) reveal that the dispatcher relayed the job as a 10-52 dispute with a knife, but that no further information about the specific nature of the dispute was provided.

It is undisputed that PO Gelband (Board Review 14), PO Vassallo (Board Review 15), PO Michaels (Board Review 16), and PO Saravia (Board Review 17) escorted § 87(2)(b) upstairs to her floor. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Gelband stated that when he and PO Vassallo arrived, § 87(2)(b) told them that her husband had threatened her with a knife in her apartment, that she had run out, and that her children were still inside. PO Gelband asked her if her husband might be in the apartment and if there were any weapons inside. She said that she did not know but that that last time she saw her husband, he had a knife. She then led them to the § 87(2)(b) and showed them her apartment door. She asked the officers to go inside and make sure that her children were safe. Before approaching the door, he drew his gun and held it to his side. He did not know if other officers drew their firearms.

PO Vassallo stated that when the officers encountered § 87(2)(b) she was screaming that her husband had a knife. Further, when an officer asked where her husband was, she said that he was in their apartment. PO Vassallo did not recall if he drew his firearm at any time, and he did not recall if any officer did so.

PO Michaels and PO Saravia stated that when they initially spoke with § 87(2)(b) she explained that her husband had made a verbal threat about using a knife but that he had not

actually displayed a knife. PO Michaels and PO Saravia each denied drawing their firearm and stated that they did not see other officers do so.

According to Patrol Guide Procedure 221-01 (Board Review 21), officers may use force to ensure safety, to protect human life, or when it is necessary to place a person in custody. In all cases, any application of force must be reasonable given the circumstances. Further, this Procedure notes that the decision to draw a firearm should be based on the articulable belief that the potential for serious physical injury is present.

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) stated that when she opened her apartment door, an officer shoved her aside. She did not sustain any injury. She described this officer only as a uniformed Hispanic male. She could provide no other detail, as a majority of officers with whom she interacted were Hispanic males. She believed that there were approximately eight officers in the hallway at the time.

§ 87(2)(g) PO Gelband, PO Vassallo, PO Michaels, and PO Saravia were present in the hallway at the time of the alleged push. Each of these four officers denied that they or any other officer pushed § 87(2)(b)

As documented in their NYPD service photographs, PO Gelband (Board Review 22) and PO Vassallo (Board Review 23) are white males with dark hair. PO Michaels (Board Review 24) is a white female. Of the four officers present in the hallway, only PO Saravia is a Hispanic male (Board Review 25). However, § 87(2)(b) described only one white male officer on scene, § 87(2)(g). Similarly, while the investigation determined that only four officers were in the hallway at the time, § 87(2)(b) believed there were approximately eight. In total, ten officers responded to the scene; six were Hispanic males. When § 87(2)(b) later exited the building from the lobby, where all of the officers ultimately gathered, she was in a position to see all of the officers. § 87(2)(g)

§ 87(2)(g)

Allegation F—Abuse of Authority: Police Officer Justin Gelband entered and searched § 87(2)(b) in the Bronx.

Allegation G—Abuse of Authority: Police Officer Robert Vassallo entered and searched § 87(2)(b) in the Bronx.

Allegation H—Abuse of Authority: Police Officer Alexandra Michaels entered and searched § 87(2)(b) in the Bronx.

Allegation I—Abuse of Authority: Police Officer David Saravia entered and searched § 87(2)(b) in the Bronx.

§ 87(2)(g)

§ 87(2)(b) stated that after she opened her apartment door and an officer pushed her aside, all of the officers present in the hallway at that time entered the apartment. No officer ever asked for permission to do so and § 87(2)(b) never told them that they could enter the apartment. They entered against her will. The officers proceeded to search all of the rooms in the apartment. While the officers searched the apartment, § 87(2)(b) asked them why they were in her apartment without her permission. She vocally protested their presence. Ultimately, after five to ten minutes, the officers determined that § 87(2)(b) was not in the apartment.

PO Gelband, PO Vassallo, PO Michaels, and PO Saravia each acknowledged entering and clearing § 87(2)(b) apartment. They testified that § 87(2)(b) was scared for the safety of her children and that she asked the officers to enter the apartment in order to make sure it was secure and to ensure that her children were safe, explicitly consenting to and even encouraging the entry. They did not enter against her will. The officers entered the apartment and cleared it room by room. They located the children but found that § 87(2)(b) was not present. According to the officers, § 87(2)(b) never complained about the entry and in fact was grateful to the officers for securing her children.

According to People v. Mitchell 39 N.Y.2d 173 (Board Review 26) (see Board Review 27 for analysis of Mitchell's citation history), officers may lawfully make warrantless entry into a location if 1) they have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; 2) the search is not primarily motivated by intent to arrest or seize evidence; and 3) there is some reasonable basis, approximately probable cause, to associate the emergency with the place to be searched.

§ 87(2)(g)

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation J—Force: Police Officer Justin Gelband pointed his gun at § 87(2)(b) and

§ 87(2)(b)

Allegation K—Force: Police Officer Robert Vassallo pointed his gun at § 87(2)(b) and § 87(2)(b)

Allegation L—Force: Police Officer Alexandra Michaels pointed her gun at § 87(2)(b) and § 87(2)(b)

Allegation M—Force: Police Officer David Saravia pointed his gun at § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) testified that when the officers entered the apartment, they each had their gun drawn. § 87(2)(b) children, § 87(2)(b) and § 87(2)(b) were standing near the doorway when the officers entered. Each officer in turn pointed his or her gun downward, at the children, and then continued past them into the apartment. The officers' actions appeared to be intentional. § 87(2)(b) protested, asking the officers to stop pointing their guns at her children.

As noted, above, only PO Gelband stated that he drew his gun. He stated that he expected to encounter children in the apartment and specifically intended not to point his gun at them. He entered the apartment first. The children were not standing by the doorway when he entered. Rather, PO Gelband located the two children in the bathroom. He did not point his gun at them at any time and did not see any other officer do so.

PO Vassallo, who did not recall if he drew his gun or not, also stated that the children were encountered in the bathroom, and not near the front door. He denied ever pointing a gun at either of the children.

PO Michaels stated that she saw two children standing at the door when it was opened. However, she and PO Saravia stated that they had not drawn their guns and did not point their gun at the children at any time. They saw no other officer do so and never heard § 87(2)(b) complain that any officer had done so.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation N—Discourtesy: Sgt. Jennyliz Sanchez spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after the officers searched the apartment, Sgt. Sanchez said to her, "Clean up, dirty bitch." Sgt. Sanchez also told § 87(2)(b) that the apartment was dirty. Sgt. Sanchez then saw a cup of apple juice on the table. She said to § 87(2)(b) "You're just a drunk bitch."

§ 87(2)(b) told Sgt. Sanchez that the cup did not contain alcohol and asked her to smell the contents. Sgt. Sanchez smelled the contents of the cup and then said, “You’re fucking lucky.” Later, as § 87(2)(b) walked down the stairs to the lobby with her children, the officers followed. On the way down, Sgt. Sanchez again told § 87(2)(b) that she was a “dirty bitch.”

Sgt. Sanchez, who arrived on the § 87(2)(b) after the apartment was secured, stated that when she entered the apartment she was concerned about the conditions she observed therein. Clothing, garbage, and papers were strewn about. Sgt. Sanchez then saw the two children. She observed bumps of some sort, which might have been insect bites, on the male child’s face. Both children appeared dirty: their clothing was unclean and their faces appeared unwashed. In regards to these observations Sgt. Sanchez later directed PO Michaels to prepare a Suspicion of Child Abuse and Maltreatment report and to make a notification to ACS in regards. However, Sgt. Sanchez denied that she ever referred to § 87(2)(b) as a “dirty bitch.” Further, she stated that she did not observe any containers of alcohol or detect the odor of alcohol in the apartment and had no reason to believe that § 87(2)(b) was intoxicated. She did not refer to § 87(2)(b) as a “drunk bitch” or make any remark in reference to the use of alcohol. Sgt. Sanchez stated that she never used any profanity toward § 87(2)(b) whatsoever.

PO Michaels, PO Vassallo, and PO Saravia also stated that that the condition of the apartment was a cause for concern. PO Gelband believed the apartment was messy but not in such a condition as to cause serious concern. However, each of the officers stated that they did not hear Sgt. Sanchez make any comment to § 87(2)(b) about the condition of the apartment. PO Saravia believed that it was PO Michaels who spoke with § 87(2)(b) about the condition of the apartment.

Further, each of these officers stated that they never observed any container of alcohol in the apartment and had no reason to believe that § 87(2)(b) was intoxicated. They never heard Sgt. Sanchez refer to § 87(2)(b) as a “dirty bitch” or a “drunk bitch,” or use any profanity whatsoever.

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Allegation O—Abuse of Authority: An officer frisked § 87(2)(b)

Allegation P—Abuse of Authority: An officer searched § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) stated that after his argument with § 87(2)(b) she exited the building. Worried, he went out to look for her. When he reentered the building’s lobby, he encountered four officers: a Hispanic female, a white female, a Hispanic male, and a white male, all of whom were in uniform. A security guard said to the officers, “That’s the guy.” § 87(2)(b) approached the officers and asked what had happened. The officers asked where he lived, and he replied that he resided in § 87(2)(b). The two male officers immediately instructed § 87(2)(b) to remain still and place his hands where they could see them. He complied. The Hispanic male officer – whom § 87(2)(b) could describe in no further detail – patted down § 87(2)(b).

§ 87(2)(b)'s waistband and all of his pants pockets. He then reached into both of § 87(2)(b)'s front pants pockets. § 87(2)(b) was carrying a cell phone in his front right pants pocket and keys in his front left pants pocket. He was carrying no other items in his pockets. § 87(2)(b) was not carrying any weapon on his person.

§ 87(2)(b) stated that she did not witness any officer frisk or search § 87(2)(b).

§ 87(2)(g) PO Gelband, PO Vassallo, PO Michaels, and PO Saravia responded first and went upstairs. Subsequently, PO Minetti (Board Review 30), PO Feliciano (Board Review 31), PO Gomez (Board Review 32), and PO Rodriguez (Board Review 33) arrived on scene.

PO Minetti, PO Feliciano, PO Rodriguez, and PO Gomez stated that upon arrival they knew only that the incident concerned a dispute with a knife. They had no specific information as to who was alleged to have a knife or who had called 911. When § 87(2)(b) entered the lobby, a security guard identified him as being involved in the domestic dispute. Although the officers believed a knife to have been involved in the incident, they had no specific information that § 87(2)(b) was a suspect in or the perpetrator of a crime. They asked him to wait with them and he did so of his own accord. § 87(2)(b) did not appear to be armed and his behavior did not concern the officers whatsoever. PO Minetti, PO Feliciano, PO Rodriguez, and PO Gomez denied frisking or searching § 87(2)(b) and each stated that they either did not witness or did not recall any other officer doing so.

Sgt. Sanchez, PO Aviles, PO Gelband, PO Vassallo, PO Michaels, and PO Saravia stated that they did not see § 87(2)(b) until they returned to the lobby, having concluded business upstairs with § 87(2)(b). They each stated that they did not see any officer frisk or search § 87(2)(b).

As noted above, NYPD radio communications pertaining to this incident reveal that the dispatcher relayed the job as a 10-52 dispute with a knife, but that no further information about the specific nature of the dispute was provided.

No 250 report was prepared in regards (Board Review 34) and none of these four officers' memo books (Board Review 35 to 38) makes reference to any frisk or search.

Only PO Minetti, PO Feliciano, PO Rodriguez, and PO Gomez were present in the lobby at the time of the alleged frisk and search. NYPD service photographs reveal that PO Minetti (Board Review 35) is a white male with dark hair, and that PO Feliciano (Board Review 36), PO Rodriguez (Board Review 37), and PO Gomez (Board Review 38) are Hispanic males. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 1

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date